



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Allied Production Management Co., Inc.  
**File:** B-237126; B-237134; B-237370  
**Date:** December 22, 1989

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### DIGEST

1. Low bids were properly rejected on the basis that individual bid bond sureties were unacceptable where their Affidavits of Individual Surety contained gross inconsistencies, misstatements and omissions of essential information, and where the contracting officers had a reasonable basis to question the accuracy and sufficiency of the surety's evidence of financial acceptability and net worth.
2. Nonresponsibility determination based on unacceptability of required individual bid bond sureties need not be referred to the Small Business Administration for review under the Certificate of Competency procedures, since such determinations are based solely on the qualifications of the surety, not the small business offeror.

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### DECISION

Allied Production Management Co., Inc., a small business, protests the rejection of its bids under three invitations for bids (IFBs)<sup>1/</sup> issued by the United States Navy, for alterations and repairs to pool lockers and an indoor swimming pool at the Naval Regional Medical Center, Oakland, California; for site preparation at the Point Mugu Naval Air Station, Point Mugu, California; and for the expansion of the commissary at the Naval Station, Pearl Harbor, Hawaii. The Navy rejected Allied's bids because its individual bid bond sureties were nonresponsible.

We deny the protests.

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<sup>1/</sup> IFB Nos. N62474-86-B-0645; N62474-89-B-6782;  
and N62471-88-B-1324.

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The IFBs required bidders to submit bid bonds in amounts equal to 20 percent of the bid prices. In the event the required bid bond named individuals as sureties rather than a corporation, two or more responsible sureties were required to execute the bid bond, and the bidder was required to provide a completed Standard Form (SF) 28, Affidavit of Individual Surety, setting forth financial information for each individual. The SF 28 includes a Certificate of Sufficiency that must be executed by specified bank officers or government officials.

Bids under IFB No. N62474-86-B-0645 (IFB No. 0645) were opened on August 29, 1989; bids under IFB No. N62474-89-6782 (IFB No. 6782) were opened on September 1; and bids under IFB No. N62471-88-B-1324 (IFB No. 1324) were opened on September 12. Allied submitted the apparent low bid in each case. In response to the requirements of each IFB, Allied submitted bid bonds guaranteed by the same two individual sureties, Anthony M. Kaufman and John J. Sullivan, whose fully-executed Certificates of Sufficiency accompanied each SF 28.

By letters dated September 12, concerning IFB Nos. 0645 and 6782, and September 27, concerning IFB No. 1324, the Navy determined that Allied's bids were unacceptable because its individual bid bond sureties were nonresponsible. The contracting officers' determinations regarding IFB Nos. 0645 and 6782 were based on a finding that each of the affidavits and accompanying financial statements for Kaufman and Sullivan contained unexplained gross inconsistencies, procedural discrepancies and material omissions. With regard to IFB No. 1324, the contracting officer found that Kaufman and Sullivan failed to provide evidence in support of their net worths and failed to disclose all outstanding bond obligations, rendering the contracting officer incapable of making an affirmative finding of sufficiency of net worth to support the bid bond. Based on the affidavits and other information available to them, the contracting officers determined that their findings raised questions about the credibility and integrity of the individual sureties and the auditors who prepared the financial reviews sufficient to render Kaufman and Sullivan unacceptable.

On September 26, Allied protested the rejection of its bids under IFB Nos. 0645 and 6782; on October 10, Allied protested the rejection of its bid under IFB No. 1324. With regard to IFB Nos. 0645 and 6782, Allied argues that the Navy 1) improperly rejected the individual sureties as nonresponsible because Allied provided sufficient financial information to permit the agency to conclude that each

surety had a net worth in excess of the penal amount of the bond; 2) inadequately reviewed the SF 28s and supporting documentation; and 3) improperly evaluated the apparent discrepancies and inconsistencies between the net worths reported in the SF 28s. Allied relies on FAR § 14.407-7(b) to argue that the Navy improperly failed to list the reasons for rejecting its bid under IFB No. 1324.2/

In its comments on the Navy's report to our Office, Allied also argues for the first time that the Navy improperly failed to seek more information about the individual sureties and improperly failed to inquire about other bid bond obligations not listed on the SF 28. Allied asserts that the Navy did not make an independent determination concerning the individual sureties' responsibility, relying instead on determinations made by other government sources, who also found Kaufman and Sullivan unacceptable individual sureties. Finally, Allied argues that the Navy improperly failed to refer the three cases to the Small Business Administration (SBA) for a Certificate of Competency (COC) determination.

The accuracy and sufficiency of the information in the SF 28 to establish the sureties' financial acceptability is a matter of responsibility which may be based on information submitted prior to award; no award may be made without an affirmative determination of responsibility. Cascade Leasing, Inc., B-231848.2, Jan. 10, 1989, 89-1 CPD ¶ 20. Because the purpose of the bonding requirement is to provide the government with a financial guarantee, information which calls into question the sureties' integrity and the credibility of their representations in connection with the procurement diminishes the likelihood that the guarantee will be enforceable, and may be considered by the agency in determining the sureties' acceptability. Ware Window Co., et al., B-233367 et al., Feb. 6, 1989, 89-1 CPD ¶ 122. Contracting officers are vested with a wide degree of discretion and business judgement when making an acceptability determination, and our Office will defer to the contracting officer's decision unless the protester can demonstrate that the determination was made in bad faith or without a reasonable basis. Allied Production Mgmt. Co., Inc., B-235686, Sept. 29, 1989, 89-2 CPD ¶ 297. Based on

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2/ Allied also argues that the Navy improperly awarded the contract to another firm at Allied's lower bid price. However, the Navy indicates that Allied's lower bid price was inaccurately stated as the award price in the rejection letter, as the contract was properly awarded at the awardee's bid price.

our review of the record, we find that the contracting officers' determinations here were reasonable in each case.

On the SF 28s for IFB No. 0645, dated July 21, Kaufman claimed a net worth of \$559,109,615 and Sullivan claimed a net worth of \$559,325,704. Unaudited financial reviews reflecting each surety's financial condition shows that the bulk of both their net worths as of April 30, 1989, was a 24.5 percent interest each in GTL Investments, Inc., of Costa Mesa, California. The contracting officer's investigation revealed that the California Secretary of State suspended GTL's corporate status on May 16, 1988. Stock certificates submitted with the record show that Kaufman and Sullivan acquired their GTL interests in February, 1989, after the suspension.<sup>3/</sup>

The GTL balance sheet was completed by Donald E. Phillips, identified as a Certified Public Accountant (CPA) in California, and the financial reviews of the individual sureties submitted for IFB Nos. 0645 and 6782 were prepared by Martin Schwartz, identified as a CPA with Schwartz Financial Services, of La Mesa, California, and signed over the name of Martin Schwartz & Associates. The contracting officer's investigation revealed that no such companies or individuals were registered with the California State Bureau of Accountancy. In any event, the CPA review supported net worths equal to only 10 percent of the amounts claimed by the sureties on the SF 28s submitted for IFB No. 0645.

Contrary to their previously declared net worths under IFB No. 0645, on their SF 28s for IFB Nos. 1324 and 6782, Kaufman claimed a net worth of \$61,451,385, while Sullivan claimed a net worth of \$68,485,254. Although Allied did not explain the gross disparities between these net worths and the net worths previously reported on the SF 28 for IFB No. 0645, Allied now argues that the financial statements supporting the affidavits were prepared 3 months apart, and thus the apparent inconsistencies between net worths actually reflected divestiture and reallocation of investments by Kaufman and Sullivan during the period between statements. We are not persuaded by this argument.

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<sup>3/</sup> GTL's balance sheet shows assets that include Convair 880 jets at an alleged fair market value of \$15,000,000. However, the Federal Aviation Administration indicated that the jets are of doubtful value since they cannot be operated in the United States because they do not comply with anti-noise pollution statutes.

In our view, the contracting officers reasonably determined that the unexplained omission from the SF 28s for IFB Nos. 1324 and 6782 of almost a billion dollars of combined assets after a period of less than 2 months raised serious questions as to the acceptability and credibility of Kaufman and Sullivan as individual sureties. Moreover, based on the questionable professional status of the CPAs who prepared the unaudited financial statements, the contracting officers reasonably determined that the net worths stated on the financial reviews were speculative at best, and reasonably questioned the accuracy of the sureties' financial representations.

Further inconsistencies and omissions exacerbated rather than allayed the contracting officers' concerns regarding the sureties' net worths. On the SF 28 for IFB No. 0645, Sullivan claimed sole ownership of a vacation home in Mexico at a reported fair market value of \$250,000, which was admittedly leased from its actual owner, a Mexican bank. Similarly, Kaufman claimed sole ownership of a residential home located in Mission Viejo, California on the SF 28s submitted with each of Allied's three bids. The reported fair value of that property varies from \$547,000 to \$799,800, with Kaufman claiming from \$139,000 to \$330,200 in equity on the three SF 28s.

Furthermore, a comparison of the outstanding bid bond obligations submitted by the two sureties also revealed material omissions. The contracting officers discovered that the sureties listed the identical 48 outstanding bond obligations on which they were liable at the time they executed their SF 28s for IFB No. 0645. Kaufman listed no outstanding bid bond obligations on the SF 28 for IFB No. 1324, and listed 60 bid bond obligations on a fourth affidavit submitted in connection with another recent Navy IFB not under consideration here.<sup>4/</sup> In addition, Kaufman and Sullivan failed to include on their SF 28 for IFB No. 6782 the bid bond for which they were obligated on IFB No. 0645, and listed only 8 of the 48 outstanding bond obligations they listed on the SF 28s for IFB No. 0645. Further, contrary to the IFB requirements, of the bid bond obligations disclosed, the sureties failed to list all of the amounts for which they were liable. We have held that all outstanding bond obligations must be disclosed, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed judgment of the sureties' financial soundness. Jerry Eaton, Inc., B-233458, Jan. 24, 1989, 89-1 CPD ¶ 71.

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<sup>4/</sup> IFB No. N62471-86-B-1361.

Here, the sureties' material omissions rendered the contracting officers incapable of making that judgment.

In addition to rendering the contracting officers unable to make an informed judgment regarding their net worths and financial soundness, the sureties made it difficult if not impossible to verify the sufficiency of their assets. The sureties' Certificates of Sufficiency for IFB No. 0645 were signed by Bradley E. Bagge of Peninsula First Financial Corporation, while Patrick Murphy, President of Millennium Management Services, Ltd., signed the Certificates of Sufficiency for IFB Nos. 1324 and 6782. The contracting officers determined that Peninsula was not an acceptable financial corporation in accordance with the requirements of the certificate, and a telephone call to the company to verify its status revealed that the telephone had been disconnected. Communications with the Office of the Commissioner of Financial Institutions, Department of Commerce, of the State of Nevada, revealed that, while incorporated in Nevada, Millennium was not licensed as a trust company in that state, and therefore was not an acceptable party to sign the Certificate of Sufficiency.

Allied argues that the contracting officer acted unreasonably in rejecting its sureties because even discounting any omitted bid bond obligations, each surety provided sufficient financial information to show a net worth in excess of the penal amount of the bonds. We disagree. Once the accuracy of the sureties' representations reasonably has been called into question, the agency is justified in rejecting the sureties, notwithstanding the adequacy of other assets. Hughes & Hughes, B-235723, Sept. 6, 1989, 89-2 CPD ¶ 218. This reflects the great reliance an agency is entitled to place on the accuracy, thoroughness, and verity of surety financial information provided for government procurements. See Farinha Enters., Inc., B-235474, Sept. 6, 1989, 68 Comp. Gen. \_\_\_, 89-2 CPD ¶ \_\_\_. Based on the information submitted, the contracting officers were justified in rejecting the sureties in this case.

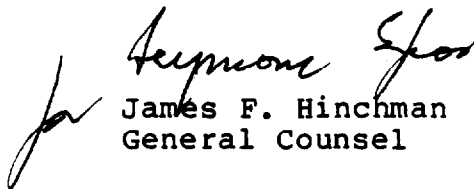
We also find unpersuasive Allied's argument that the Navy based its determination on an inadequate review of the financial positions of each surety and that it failed to make an independent determination of responsibility concerning Kaufman and Sullivan. We have specifically held that a contracting officer may rely on the initial and subsequently furnished information regarding net worth submitted by a surety, without further conducting an independent investigation. See KASDT, Corp., B-235620, Aug. 21, 1989, 89-2 CPD ¶ 162. Contrary to Allied's assertions that the Navy automatically rejected its bids

without examining the financial conditions of the sureties, the record shows the contracting officers went well beyond the documents submitted in attempting to determine the responsibility of each surety. In addition to examining and comparing the financial statements, the contracting officers contacted other government sources who provided additional information bearing directly on the responsibility of the individual sureties. In our opinion, the contracting officers reasonably determined that the gross unexplained inconsistencies in net worths, omissions of bid bond obligations, and misstatements about ownership and value of assets called into question the sureties' integrity and the credibility of their representations, thereby diminishing the likelihood that the sureties' financial guarantee would be enforceable. This determination provided a proper basis for rejecting the sureties. Farinha Enters., Inc., B-235474, supra.

To the extent that Allied relies on FAR § 14.407-7(b) to argue that the Navy improperly failed to list the reasons for rejecting its bid under IFB No. 1324, that reliance is misplaced. FAR § 14.407-7(b) is a directive to the contracting officer to document in the contracting file cases where the award is not made to the low bidder. The record shows that this requirement was complied with in this case.

Finally, Allied argues that the Navy improperly failed to refer the cases to the SBA for a COC determination. When the determination that a bidder is nonresponsible is based solely on the unacceptability of its sureties, the determination need not be referred to the SBA, since such determinations are based solely on the qualifications of the surety, not the small business offeror. Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581; Cascade Leasing, Inc., B-231848.2, supra.

The protests are denied.

  
James F. Hinchman  
General Counsel